TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 25

THE UNITED STATES OF AMERICA, APPELLANT

vs.

JACOB TROY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED APRIL 24, 1934

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 25

THE UNITED STATES OF AMERICA, APPELLANT

vs.

JACOB TROY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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66401—34——1

1 In United States District Court for the Middle District of Pennsylvania

No. 8694. June term, 1933

THE UNITED STATES

vs.

JACOB TROY

Docket entries

1933
June 7—Indictment: Vio. Revenue Act of 1928.
" " —A true bill.
Oct. 13—Petition for rule to show cause why indictment should not be quashed and
" " —Order granting rule to show cause returnable next argument court.

1934
Feb. 12—Answer to motion to quash indictment.
" 22—Opinion and
" " —Order making rule absolute and the indictment quashed.
Mar. 22—Petition for appeal and order allowing appeal.
" " —Assignment of errors.
" " —Statement of jurisdiction.
" " —Citation and notice and acceptance of service thereon.
" " —Certificate of presiding judge.
" " —Praecipe and notice of filing and acceptance of service thereon.
" " —Order directing the clerk to transmit the original transcript on appeal to the Solicitor General of the United States, Washington, D.C.
Apr. 2—Stipulation that the judgment to be entered in case # 8694, June term, 1933, by the Supreme Court of the United States shall also be entered in case no. 8695, June term, 1933.

2 In United States District Court

[Title omitted.]

Indictment

Filed June 7, 1933

The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Middle District of Pennsylvania, at the June term of said court, in the year 1933, and inquiring for said district, upon their oath present: That Jacob Troy, late of the city of Wilkes-Barre, State of Pennsylvania, hereinafter in this indictment sometimes called the defendant, on, to wit, March 15, 1930, at Scranton, in said State, and in

the Middle District of Pennsylvania, and within the jurisdiction of this court, unlawfully did wilfully and knowingly attempt to defeat and evade a large part, to wit, $4,429.08, of a tax upon the net income of the Troy Oil Company, Incorporated, a corporation, for the calendar year 1929, which tax was imposed by an act of Congress approved May 29, 1928, entitled "An act to reduce and equalize taxation, provide revenue, and for other purposes", which act of Congress is known as the Revenue Act of 1928, which said unlawful and wilful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

That the said Troy Oil Company, Incorporated, hereinafter sometimes called the corporation, during the calender year 1929,
3 and up to and including March 15, 1930, was a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, engaged in the wholesale and retail gasoline and oil business, with its principal office and place of business at Wilkes-Barre aforesaid, in said State, and within the Twelfth Internal Revenue Collection District of Pennsylvania, and was not a corporation exempt from taxation under the provisions of the act of Congress aforesaid; and the said defendant, Jacob Troy, was at all times hereinafter set forth, and during the calendar year 1929, the duly elected and acting president and employee of the said corporation; that the regular annual accounting period of the said corporation was on the basis of the calendar year and not on the basis of a fiscal year, and the said corporation was then and there required by the act of Congress aforesaid, and pursuant to rules and regulations made and prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury of the United States of America, as authorized in and by virtue of the act of Congress aforesaid, to make to the collector of internal revenue for the said collection district, a return for the calendar year 1929, after the close of the calendar year 1929 and on or before March 15, 1930, stating specifically the items of its gross income and the deductions and credits allowed by title I (income tax) of the said act of Congress, duly sworn to by its president, vice president, or other principal officer and by its treasurer or assistant treasurer and, by reason of the fact, which the said grand jurors upon their oath charge to be a fact, that during the said calendar year 1929, the said corporation had and derived a gross income of, to wit, $172,668.07, derived as follows, that is to say:

4 Gross sales from trading or manufacturing, less returns and allowances	$331,136.39
Less: Cost of goods sold	158,768.32
Gross profit from trading	172,368.07
Dividends on stock of domestic corporations	300.00
Total income	172,668.07

and that during the said calendar year 1929 the said corporation was entitled to and allowed by the provisions of said title I of said

act of Congress deductions (in addition to deductions allowed in computing the "gross income" as aforesaid) in the sum of, to wit, $131,945.51, on account of the following:

Compensation of officers	$3,600.00
Rent on business property	5,135.08
Dividends	300.00
Interest	558.11
Taxes	11,093.76
Loss on sale of securities	23,791.30
Depreciation	1,369.38
Repairs	495.31
Other deductions:	
Employees' salaries and wages	9,833.69
Freight	27,854.65
Insurance	545.03
Light, heat, and power	2,856.62
Traveling expense	26.10
Miscellaneous expenses	44,486.48
Total deductions	131,945.51

and that said corporation had and derived and received a net income for said calendar year 1929, to wit, the gross income less the deductions allowed by law, of, to wit, $40,722.56, upon which said net income of said corporation for said calendar year 1929 an income tax of, to wit, $4,479.48, under the act of Congress aforesaid, became and was due by the corporation on, to wit, March 15, A.D. 1930, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said corporation to the said collector of internal revenue for the said Twelfth Internal Revenue Collection District of Pennsylvania; and the said defendant,

Jacob Troy, as president of said corporation, well knowing
5 the premises aforesaid, and the corporation being indebted to the United States of America in the amount aforesaid by reason of the said tax imposed by the aforesaid act of Congress, and the said defendant, Jacob Troy, then and there well knowing that the gross income and the net income derived and had and received by the said corporation during the said calendar year 1929 were as aforesaid, on, to wit, March 15, 1930, at Scranton aforesaid, in the district aforesaid, unlawfully did willfully and knowingly attempt to defeat and evade a large part, to wit, $4,429.08, of the said tax upon the said net income of the said corporation for the calendar year 1929, and as an overt act in so unlawfully, willfully, and knowingly attempting to defeat and evade said tax, did, on, to wit, March 15, 1930, at Wilkes-Barre aforesaid, in the State aforesaid, make under oath an income-tax return for said corporation for said calendar year 1929, and thereafter and on, to wit, March 15, 1930, at Scranton aforesaid, in the State and District aforesaid, did file and cause to be filed with said collector of internal revenue for the said Twelfth Internal Revenue Collection District of Pennsylvania, said income-tax return for the calendar year 1929, prepared and sworn to as aforesaid, stating specifically therein the items of the gross income

of the corporation for the said calendar year 1929 to have been the sum of $28,126.37, and no more, derived as follows:

Gross sales from trading or manufacturing, less returns and allowances		$68,854.32
Less cost of goods sold:		
Inventory at beginning of year	$5,917.19	
Merchandise bought for sale	41,011.84	
Total	46,929.03	
Less inventory at end of year	6,201.08	
		40,727.95
Total income		28,126.37

and stating specifically the items of deductions (in addition to the deductions taken in computing "gross income" as aforesaid), allowed by the act of Congress aforesaid for the said calendar year 1929 to have been the sum of $24,668.23, on account of the following:

6	Compensation of officers	$3,600.00
	Rent on business property	3,800.00
	Interest	180.00
Taxes on gasoline		11,813.94
Other deductions not reported above:		
	Salaries and wages	3,300.00
	Freight	295.18
	Insurance	440.88
	Light	1,092.90
	Telephone	145.33
Total deductions		24,668.23

and stating therein no other items of deductions, and stating specifically the net income, to wit, the said gross income less the said deductions allowed by law for the said calendar year 1929, to have been the sum of $3,458.14, and no more, and showing the total tax due and payable by the said corporation thereon to have been $50.40, and no more, and paid and caused to be paid by said corporation to the collector of internal revenue for the said Twelfth Internal Revenue Collection District of Pennsylvania the sum of, to wit, $50.40, and no more, and furthermore, neither the said defendant nor the said corporation has ever made to the said collector of internal revenue any other income tax return for the said calendar year 1929 for and in behalf of said corporation, stating specifically the items of its gross income and the deductions and credits allowed by law, and neither the said defendant nor the said corporation has ever made any other payment or payments to said collector or to any other proper officer of the United States of any sums of money on account of the said tax debt of said corporation for said calendar year 1929; against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

ANDREW B. DUNSMORE,
United States Attorney.

A true bill:

_____ _____,
Foreman of the Grand Jury.

[File endorsement omitted.]

7 [Title omitted.]

In United States District Court

Motion for rule to show cause why indictment shall not be quashed

Filed Oct. 13, 1933

To the honorable, the judges of the above court:

Now, October 12, 1933, the above-named defendant asks that a rule be granted to show cause why the indictment in the aforesaid case shall not be quashed and assigns therefor the following reasons:

First. The indictment shows upon its face that the prosecution is barred by the statute of limitations.

Second. The offense is laid as having been committed on March 15, 1930. The indictment was returned in June 1933. The Federal statute of limitations covering this offense limits the term in which prosecution can be brought to three years after the commission of the offense.

"Third. The indictment is defective because it fails to aver that Jacob Troy was under a duty to perform the act in respect of which there was a violation charged of the act of Congress of May 29, 1928.

"The indictment is defective in that it fails to set forth that the defendant was under a duty to perform the act in respect of which the violation occurred and in the absence of this averment the indictment fails to set forth facts showing prima facie, a commission of the crime charged in the indictment."

8 A. M. Lucks,
R. L. Levy,
Attorneys for Defendant.

[*Duly sworn to by R. L. Levy jurat omitted in printing.*]

9 In United States Court

(Title omitted.)

Order granting rule to show cause filed October 13, 1933

Now, October 13, 1933, upon consideration of the within reasons, rule is granted to show cause why the indictment shall not be quashed, said rule to be returnable to August court.

Albert Watson,
United States District Judge.

10 In United States District Court

[Title omitted.]

Answer to motion to quash indictment

Filed Feb. 12, 1934

To the honorable the judges of the said court:

And now comes the United States of America by Herman F. Reich, assistant United States attorney in and for the Middle District of Pennsylvania, who, on its behalf replies and to the motion to quash the indictment, says:

1. The allegations of the first paragraph of the motion are denied both as a question of fact and as a question of law, and your affiant avers in further answer thereto that a prosecution is not barred by the statute of limitations; that the time in the said statute of limitations as to the particular offense charged in the indictment was extended to six years and that such extension to six years occurred by Act of Congress prior to the expiration of the period under the statute of limitations in existence prior to such Act of Congress extending the term of the statute, and that the said period of six years had not elapsed at the time of the indicting of the defendant herein.

2. The allegations of the second paragraph of the motion are denied, and for further answer thereto it is averred that, as a

11 matter of law, the statute of limitations covering this offense is six years together with a further period under the further provisions in the statute that, "The time during which the person committing any of the offenses above mentioned is absent from the district wherein same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings." And further, your affiant is informed and expects to prove if the same should be necessary, to extend the period beyond the regular term of the statute of limitations, that the defendant was absent from the district for a considerable period in the manner as contained in the said proviso, and did thereby prevent the running of the statute during that period, and that by reason thereof, as well as for the other reasons hereinbefore set forth, the period of the statute of limitations had not expired and the prosecution had not been barred by the statute of limitations.

3. The allegations of the third paragraph are denied and for further answer thereto it is averred that as a matter of law the indictment contains all necessary allegations to sufficiently and fully charge the defendant with the offense, and that as a matter of law it was not necessary to set forth that the defendant was under a duty to perform the act in respect of which the violation is alleged to have occurred in any manner other than as the same is alleged in the indictment, and the indictment does fully charge the commission of the

crime with language sufficient to constitute a legal, valid, and subsisting indictment fully charging the offense as completely as required by law.

12–13 Wherefore it is respectfully submitted that the prayer of the motion to quash should be denied.

HERMAN F. REICH,
Asst. U.S. Attorney.

[*Duly sworn to by Herman F. Reich, jurat omitted in printing.*]
[File endorsement omitted.]

14 In United States District Court for the Middle District of Pennsylvania

No. 8694. June Term, 1933

UNITED STATES OF AMERICA
vs.
JACOB TROY

Opinion

Filed February 22, 1934

The defendant was indicted on June 7, 1933, for a violation of the Revenue Act of 1928 (U.S.C.A., title 26, sec. 2146). The defendant filed a petition for a rule to show cause why the indictment should not be quashed, which rule was granted.

The third reason assigned in support of the rule to show cause is as follows:

"Third. The indictment is defective because it fails to aver that Jacob Troy was under a duty to perform the act in respect of which there was a violation charged of the act of Congress of May 29, 1928.

"The indictment is defective in that it fails to set forth that the defendant was under a duty to perform the act in respect of which the violation occurred and in the absence of this averment the indictment fails to set forth facts showing prima facie, a commission of the crime charged in the indictment."

The definition of the offense with which the defendant is charged in the indictment is found in that part of the Revenue Act of 1928, which reads as follows:

"Any person required under this title to collect, account for, and pay over any tax imposed by this title, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade of defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not
15 more than five years, or both, together with the costs of prose-

cution. (c) The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

In the indictment it is alleged, inter alia, that the defendant on March 15, 1930, did wilfully and knowingly attempt to defeat and evade a large part, to wit, $4,429.08, of a tax upon the net income of the Troy Oil Company, Incorporated, for the calendar year 1929; that the defendant was the duly elected and acting president of said corporation; that the defendant, on March 15, 1930, did make under oath an income-tax return for said corporation for the year 1929; that, on March 15, 1930, the defendant did file said income-tax return; that said defendant did pay, and cause to be paid, by said corporation the total tax due and payable by said corporation on said income, and no more; that the actual income of said corporation for the year, for which said return was made, was far in excess of said income return, and that the income tax due the United States of America March 15, 1930, was far in excess of the income tax so paid.

Nowhere in the indictment is it alleged that the defendant was under a duty to perform the act in respect of which the violations occurred. It cannot be said that as the defendant was president of the corporation, he was under a duty to perform the acts which he is alleged to have performed. "Aside from his position as presiding officer of the board of directors and of the stockholders when convened in general meeting, the president of a corporation has by virtue of his office, merely, no greater power than that of any director. Whatever authority he has must be expressly conferred on him by statute, charter, or by-law or the board of directors or be implied from express powers granted, usage or customs, or the nature of the company's business." 14a Corpus Juris, sec. 1858.

16 In an indictment every fact necessary to constitute the crime charged must be positively alleged, and nothing can be charged by implication or intendment. "It may be said this is a very technical construction, but in criminal cases, where the liberties of the defendant are involved, no intendments can be indulged in favor of an indictment; it must allege 'all the facts necessary to bring the case within the intent of the act.'" United States vs. Horton, 282 Fed. 731.

In my opinion, it would be necessary to prove that the defendant was as president under a duty to perform the act which he is alleged to have performed in order to support a conviction, and such is not alleged in the indictment.

Now, February 22, 1934, the rule to show cause why the indictment should not be quashed is made absolute, and the indictment is quashed.

ALBERT L. WATSON,
United States District Judge.

[File endorsement omitted.]

17 In United States District Court for the Middle District of Pennsylvania

Petition for appeal and order allowing same

Filed March 22, 1934

Comes now the United States of America, plaintiff in the above-entitled cause, by Andrew B. Dunsmore, United States attorney in and for the Middle District of Pennsylvania, and conceiving itself aggrieved by the order entered in this cause on February 22, 1934, quashing the indictment, prays that an appeal may be allowed from said order to the Supreme Court of the United States, and in connection with this petition the United States presents herein its assignment of errors and statement of jurisdiction.

Dated March 22, 1934.

UNITED STATES OF AMERICA,

By its attorney:

ANDREW B. DUNSMORE,
United States Attorney.

Appeal allowed this 22 day of March 1934.

ALBERT L. WATSON,
United States District Judge.

[File endorsement omitted.]

18 In United States District Court

[Title omitted.]

Assignment of errors

Filed March 22, 1934

Comes now the United States of America, by Andrew B. Dunsmore, United States attorney in and for the Middle District of Pennsylvania, and in connection with its appeal makes the following assignment of errors:

1. The district court erred in quashing the indictment.

2. The district court erred in holding that the facts pleaded did not constitute a violation of any statute of the United States.

3. The district court erred in holding that the indictment is defective, in that it fails to set forth that the defendant was under a duty to perform the act in respect of which the violation occurred.

4. The district court erred in construing section 146 (b) of the Revenue Act of 1928 (upon which the indictment was founded) as requiring, as an essential element of the crime of wilfully attempting to evade or defeat the tax involved, that the defendant shall have

been under a duty to perform the acts which he in fact performed, and in connection with which the violation charged occurred.

Dated March 22, 1934.

THE UNITED STATES OF AMERICA.

By its attorney:

ANDREW B. DUNSMORE,
United States Attorney.

[File endorsement omitted.]

19 In United States District Court

[Title omitted.]

Certificate of presiding judge

Filed March 22, 1934

Now, March 22, 1934, it is certified that the order and judgment in the above-entitled cause made and entered, quashing the indictment, was based upon a construction of section 146 of the Revenue Act of 1928, c. 852, 45 Stat. 791 (the statute upon which the indictment was founded), my construction of said section being that it is essential to the existence of the crime of wilful attempt to evade or defeat the tax that the defendant shall have been under a duty to perform the act in respect of which the violation charged occurred, which duty should be alleged in the indictment.

ALBERT L. WATSON,
United States District Judge.

[File endorsement omitted.]

20 In United States District Court

[Title omitted.]

Praecipe for transcript of record

Filed March 22, 1934

The clerk of this court is hereby directed to prepare and certify a transcript of the record in the above-entitled case for the use of the Supreme Court of the United States by including therein the following:

1. Indictment.
2. Petition for rule to show cause why indictment should not be quashed.
3. Order granting rule to show cause.
4. Answer to motion to quash.
5. Opinion and order making rule absolute.
6. Petition for appeal and order allowing same.

7. Assignment of errors.
8. Certificate of presiding judge.
9. Statement of jurisdiction.
10. Citation.
11. Docket entries.
12. This praecipe.

ANDREW B. DUNSMORE,
United States Attorney.

HERMAN F. REICH,
Asst. U.S. Attorney,
Counsel for Appellant.

21 In United States District Court

[Title omitted.]

Notice of filing praecipe

Filed March 22, 1934

To R. L. LEVY and A. M. LUCKS,
Attorneys for Defendant, Jacob Troy:

Please take notice that on the 22d day of March 1934 the undersigned filed with the clerk of this court, a praecipe for the record to be transmitted to the Supreme Court of the United States on the appeal taken in the above cause, a copy of which praecipe is herewith served on you.

Dated this 22d day of March 1934.

ANDREW B. DUNSMORE,
United States Attorney.

HERMAN F. REICH,
Asst. U.S. Attorney,
Counsel for Appellant.

Service of the within notice and copy of praecipe is hereby accepted this 22d day of March 1934.

A. M. LUCKS,
Attorney for Defendant (Jacob Troy).

22 In United States District Court

[Title omitted.]

Order directing transmittal of original transcript

Filed March 22, 1934

And now, to wit, March 22, 1934, upon motion of Andrew B. Dunsmore, United States attorney, the clerk of this court is directed

to transmit the original transcript on appeal in this case to the Solicitor General of the United States, Washington, D.C., for printing and docketing thereof.

ALBERT L. WATSON.
United States District Judge.

[File endorsement omitted.]

23 [Clerk's certificate to foregoing transcript omitted in printing.]

24 [Citation in usual form showing service on A. M. Lucks filed March 22, 1934, omitted in printing.]
[File endorsement omitted.]

25 In Supreme Court of the United States

Statement of points relied upon, and designation of entire record for printing

Filed April 27, 1934

Pursuant to Rule 13 of this Court, appellant specifies the following points upon which it intends to rely in the above-entitled cause:

1. The District Court erred in holding that the facts pleaded did not constitute a violation of any statute of the United States.

2. The District Court erred in holding that the indictment is defective in that it fails to set forth that the defendant was under a duty to perform the act in respect of which the violation occurred.

3. The District Court erred in construing section 146 (b) of the Revenue Act of 1928 (upon which the indictment was founded) as requiring, as an essential element of the crime of wilfully attempting to evade or defeat the tax involved, that the defendant shall have been under a duty to perform the acts which he in fact performed, and in connection with which the violation charged occurred.

The appellee deems the entire record, as filed, to be necessary for the consideration of the above contentions.

Dated: April 27, 1934.

J. CRAWFORD BIGGS,
Solicitor General.

[File endorsement omitted.]

26 In Supreme Court of the United States

No. 26. October term, 1934

Stipulation to abide result of cause no. 25

Filed April 25, 1934

Inasmuch as the issues presented in the above case are identical with those involved in The United States, Appellant v. Jacob Troy,

No. 25 on the docket of this Court for the present term (no. 8694 of the June term, 1933, of the District Court of the United States for the Middle District of Pennsylvania), it is hereby stipulated by and between counsel for the respective parties hereto, in order to save printing costs and to avoid duplication of documents, (1) that the printing of the record in this case be dispensed with; (2) that no brief shall be filed or oral arguments made in this case on behalf of either party; and (3) that the same judgment shall be entered by this Court in this case that it enters in no. 25, The United States, Appellant v. Jacob Troy (no. 8694 of the June term, 1933, of the District Court of the United States for the Middle District of Pennsylvania).

J. CRAWFORD BIGGS,
Solicitor General.
A. M. LUCKS,
R. L. LEVY,
Counsel for Appellee.

MARCH 26, 1934.

[File endorsement omitted.]

(Endorsement on cover:) File No. 38,588. M. Pennsylvania, D.C.U.S. Term no. 25. The United States of America, appellant, vs. Jacob Troy. Filed April 24, 1934. File no. 25 of 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1934

In the United States District Court for the Middle District of Pennsylvania

JUNE TERM, 1933

No. 8694

THE UNITED STATES, APPELLANT

vs.

JACOB TROY

STATEMENT OF JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, appellant submits herewith its statement showing the basis of the jurisdiction of the Supreme Court to entertain the appeal in the above-entitled cause:

A

Statutes

The statutory jurisdiction of the Supreme Court to review by direct appeal the order here complained of is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U.S.C., Title 18, Sec. 682), otherwise known as the Criminal Appeals Act, and by Section 238 of the Judicial Code as

amended by the Act of February 13, 1925, c. 229, 43 Stat. 938 (U.S.C., Title 28, Sec. 345).

B

Dates of order and application for appeal

The order of the District Court was entered February 22, 1934. An application for appeal was filed March —, 1934, and allowed March —, 1934.

C

Nature of the case

The indictment was based upon Section 146 (b) of the Revenue Act of 1928, c. 852, 45 Stat. 791. It charges that Jacob Troy, as president of the Troy Oil Company, Inc., unlawfully, wilfully, and knowingly attempted to defeat and evade a large part of the tax upon the net income of the said Troy Oil Company for the year 1929 by the filing of an income-tax return which understated the net taxable income and the tax due thereon. A petition for a rule to show cause why the indictment should not be quashed was granted, and upon the hearing the court so construed Section 146 (b) of the Revenue Act of 1928 as to require that in order for an indictment to charge an offense thereunder against an officer of a corporation who filed a false and fraudulent corporate income-tax return, it was necessary to allege that the defendant, as such officer, was under a duty to file such return, and that

inasmuch as the indictment herein failed to allege that the defendant was under such a duty, it was defective. Accordingly, the court made the rule to show cause absolute, and quashed the indictment.

D

Cases sustaining jurisdiction

The following decisions are believed to sustain the jurisdiction of the Supreme Court:

United States v. *Keitel*, 211 U.S. 370, 386.
United States v. *Ramsey*, 271 U.S. 467, 469.
United States v. *Patten*, 226 U.S. 525, 535.
United States v. *Birdsall*, 233 U.S. 223, 230.
United States v. *Nixon*, 235 U.S. 231, 235.
United States v. *Heinze*, 218 U.S. 532, 540.
United States v. *Mescall*, 215 U.S. 26, 31.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General of the United States.

MARCH 22, 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1934

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 985

UNITED STATES OF AMERICA, APPELLANT

v.

JACOB TROY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, as amended, appellant submits herewith its statement showing the basis of this Court's jurisdiction in the above-entitled cause.

DATES OF JUDGMENT AND APPLICATION FOR APPEAL

The judgment of the District Court was entered February 22, 1934. An application for appeal was filed March 22, 1934, and allowed March 22, 1934.

OPINION BELOW

The opinion of the District Court is found at pages 14–16 of the record.[1]

QUESTION PRESENTED

Whether the judgment of the District Court quashing the indictment on the ground that it was defective in that it failed to allege that the appellee was *under a duty to file the corporate income tax return,* the filing of which was alleged to have constituted the offense, was "based upon the * * * construction of the statute upon which the indictment is founded" within the meaning of the Act of March 2, 1907, c. 2564, 34 Stat. 1246.

STATUTES INVOLVED

These will be found in the Appendix.

STATEMENT

On June 7, 1933, appellee was indicted in the United States District Court for the Middle District of Pennsylvania, under Section 146 (b) of the Revenue Act of 1928, *infra,* the indictment charging that appellee, as president of the Troy Oil Company, Inc., unlawfully, wilfully, and knowingly attempted to defeat and evade a large part, to-wit, $4,429.08, of the tax due upon the net income of $40,722.56 of the said corporation for the calendar

[1] All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the District Court and on file with the Clerk of this Court. The record has not yet been printed.

year 1929, by making and filing an income tax return for the corporation, which was prepared and sworn to by appellee, stating that the net income of the corporation was $3,458.14, upon which the tax was $50.40. (R. 2–6.)

A petition for a rule to show cause why the indictment should not be quashed was filed on October 12, 1933 (R. 7–8), on the grounds that (R. 7):

> The indictment is defective because it fails to aver that Jacob Troy was under a duty to perform the act in respect of which there was a violation charged of the Act of Congress of May 29, 1928.
>
> The indictment is defective in that it fails to set forth that the defendant was under a duty to perform the act in respect of which the violation occurred and in the absence of this averment the indictment fails to set forth facts showing prima facie, a commission of the crime charged in the indictment.

The rule was granted by the District Court (R. 9), and on February 22, 1934, it was made absolute and the indictment was quashed. (R. 14–16.) A certificate of the presiding judge dated March 23, 1934, stated the basis of the court's decision as follows (R. 19):

> Now, March 22, 1934, it is certified that the order and judgment in the above-entitled cause made and entered, quashing the indictment, was based upon a construction of Section 146 of the Revenue Act of 1928, c. 852, 45 Stat. 791, (the statute upon which the indictment was founded), my construc-

> tion of said section being that it is essential to the existence of the crime of wilful attempt to evade or defeat the tax that the defendant shall have been under a duty to perform the act in respect of which the violation charged occurred, which duty should be alleged in the indictment.

Petition for direct appeal to this Court was presented and allowed on March 22, 1934. (R. 17.) On April 2, 1934, appellee filed with the District Court a motion to dismiss the appeal on jurisdictional grounds, and also a statement making against the jurisdiction of this Court.

ARGUMENT

THIS COURT HAS JURISDICTION OF THE APPEAL

The Act of March 2, 1907, *infra*, provides:

> A writ of error may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit:
>
> From a *decision or judgment quashing*, setting aside, or sustaining a demurrer to, *any indictment*, or any count thereof, *where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded.* (Italics ours.)

The indictment in this case is founded upon Section 146 of the Revenue Act of 1928, *infra*. Subsection (b) thereof provides in part as follows:

> * * * any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony * * *.
>
> Subsection (c) provides:
>
> The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Thus the narrow question presented is whether the judgment of the District Court quashing the indictment and dismissing the case was based upon a construction of this statute.

From the opinion of the court (R. 14–16) it clearly appears that the court's action was predicated upon the view that it does not constitute a violation of the above statute for a president of a corporation to attempt to evade and defeat the payment of the corporate tax by the filing of a false return, *unless such president is under a duty to file such corporate return.*

It is the Government's position that such construction of the statute is erroneous. The question as to which view is correct depends upon the proper construction to be placed upon Section 146, *supra.* It follows that the order of the court was "based upon the * * * construction of the statute * * * upon which the indictment is founded", within the meaning of the Act of March 2, 1907,

c. 2564, 34 Stat. 1246. Any possible doubt that might exist with respect to this question is removed by the certificate of the District Judge (R. 19), wherein he certifies:

> * * * that the order and judgment * * * quashing the indictment * * * was based upon a construction of Section 146 of the Revenue Act of 1928, * * * my construction of said section being that it is essential to the existence of the crime of wilful attempt to evade or defeat the tax that the defendant shall have been under a duty to perform the act in respect of which the violation charged occurred, which duty should be alleged in the indictment.

As stated by this Court in *United States* v. *Birdsall*, 233 U.S. 223, 230:

> As the District Court held that the acts charged did not fall within the condemnation of the statute, the court necessarily construed the statute and the cases are properly here.

In *United States* v. *Patten*, 226 U.S. 525, this Court stated (p. 535):

> The court could not have decided, as it did, that the acts charged are not within the condemnation of the statute without first ascertaining what it does condemn, which, of course, involved its construction. Indeed, it seems a solecism to say that the decision that the acts charged are not within the statute is not based upon a construction of it.

See also *United States* v. *Keitel,* 211 U.S. 370, 386; *United States* v. *Ramsey,* 271 U.S. 467, 469; *United States* v. *Nixon,* 235 U.S. 231, 235; *United States* v. *Heinze,* 218 U.S. 532, 540; *United States* v. *Mescall,* 215 U.S. 26, 31.

CONCLUSION

The Government therefore submits that this Court has jurisdiction of the appeal, and that the motion to dismiss should be denied.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.
FRANK J. WIDEMAN,
Assistant Attorney General.
JAMES W. MORRIS,
JOHN H. MCEVERS,
EARL C. CROUTER,
Special Assistants to the Attorney General.

MAY 1934.

APPENDIX

STATUTES INVOLVED

Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U.S.C., Title 18, Sec. 682):

> A writ of error may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit:
>
> From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded.
>
> From a decision arresting a judgment of conviction for insufficiency of the indictment, where such decision is based upon the invalidity or construction of the statute upon which the indictment is founded.
>
> From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.
>
> The writ of error in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases.
>
> Pending the prosecution and determination of the writ of error in the foregoing instances, the defendant shall be admitted to bail on his own recognizance: *Provided,* That no writ of error shall be taken by or allowed the United States in any case where there has been a verdict in favor of the defendant.

Revenue Act of 1928, c. 852, 45 Stat. 791, 835:

SEC. 146. PENALTIES.

* * * * *

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for any pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

U. S. GOVERNMENT PRINTING OFFICE: 1934

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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 25

UNITED STATES OF AMERICA, APPELLANT

v.

JACOB TROY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 7–8) is reported in 6 F.Supp. 315.

JURISDICTION

The judgment to be reviewed was entered February 22, 1934 (R. 7–8). An appeal to this Court was allowed March 22, 1934 (R. 9). The jurisdiction of this Court to review by direct appeal the judgment involved is conferred by the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246

(U.S.C., Title 18, Sec. 682), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Where the president of a corporation filed a false and fraudulent income tax return for the corporation, with intent to defeat a portion of the tax owing by such corporation and the payment thereof, is it essential in order to establish a violation of Section 146 (b) of the Revenue Act of 1928 by such president, to allege and prove that he was under a duty to file such corporate return?

STATUTES INVOLVED

These will be found in the Appendix, *infra*, pp. 8–9.

STATEMENT

On June 7, 1933, the appellee was indicted in the District Court of the United States for the Middle District of Pennsylvania, under Section 146 (b) of the Revenue Act of 1928, the indictment charging that the appellee, as president of the Troy Oil Company, Inc., unlawfully did willfully and knowingly attempt to defeat and evade a large part, to wit, $4,429.08, of the tax due upon the net income of $40,722.56 of the corporation for the calendar year 1929, by making under oath and filing an income tax return for the corporation which stated that the net income of the corporation was $3,458.14,

and that the tax due and payable was $50.40 (R. 1–4).

A motion for a rule to show cause why the indictment should not be quashed was filed on October 13, 1933, on the ground that (R. 5):

> The indictment is defective because it fails to aver that Jacob Troy was under a duty to perform the act in respect of which there was a violation charged of the act of Congress of May 29, 1928.
>
> The indictment is defective in that it fails to set forth that the defendant was under a duty to perform the act in respect of which the violation occurred and in the absence of this averment the indictment fails to set forth facts showing prima facie, a commission of the crime charged in the indictment.

The rule was granted by the District Court (R. 5) and an answer was filed by the United States (R. 6–7). On February 22, 1934, the District Court held that to establish an offense under Section 146 (b) of the Revenue Act of 1928, it was necessary that the Government allege and prove that the defendant was under a duty to file the corporate return in question, and that since the indictment contained no such allegation it was defective. The court accordingly made the rule to show cause absolute and quashed the indictment (R. 7–8). On March 22, 1934, a petition for appeal to this Court was presented and allowed (R. 9).

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred—

(1) In quashing the indictment.

(2) In holding that the facts pleaded did not constitute a violation of any statute of the United States.

(3) In holding that the indictment is defective, in that it fails to set forth that the defendant was under a duty to perform the act in respect of which the violation occurred.

(4) In construing Section 146 (b) of the Revenue Act of 1928 (upon which the indictment was founded) as requiring, as an essential element of the crime of willfully attempting to evade or defeat the tax involved, that the defendant shall have been under a duty to perform the acts which he in fact performed, and in connection with which the violation charged occurred.

ARGUMENT

The question for consideration is whether the president of a corporation who files on behalf of his corporation a false and fraudulent income tax return in an effort to defeat the payment of a part of the corporate tax, may be convicted under Section 146 (b) of the Revenue Act of 1928, *infra,* where it is not alleged in the indictment that he was under a duty to file the return.

Section 146 (b) in part provides:

> *any person* who willfully attempts *in any manner* to *evade* or *defeat any tax* imposed

> by this title or the *payment thereof,* shall, in addition to other penalties provided by law, be guilty of a felony * * *. (Italics ours.)

The term "any person" includes all natural (*Nigro* v. *United States,* 276 U.S. 332, 344), as well as corporate (Sec. 701 (a) (1), Revenue Act of 1928, *infra*[1]) persons. Likewise, the phrase "*any tax* imposed by this title" (italics ours) must be construed to include *all taxes* imposed by such title, no matter by whom owing. These inclusive terms, when coupled with the phrase "in any manner", indicate a purpose on the part of Congress to cover all possible methods of attempting to deprive the Government of taxes lawfully owing. *United States* v. *Miro,* 60 F. (2d) 58, 60 (C.C.A. 2d). Furthermore, the presence of the word "defeat" in addition to the word "evade" clearly points to an intention not only to reach those who attempt to "evade", escape, or elude a tax directed at them, but also those who attempt to "defeat", frustrate, or nullify the efforts of the Government to collect from another.

It follows that an officer of a corporation who attempts to defeat the payment of the corporation's tax, by the filing of a false and fraudulent income tax return, is guilty of a violation of Section 146 (b) of the Revenue Act of 1928 (*Levy* v. *United*

[1] This section defines the term "person" as including "a corporation."

States, 271 Fed. 942 (C.C.A. 3d); *United States* v. *Smith,* 13 F. (2d) 923, 924 (W.D.La.); *Capone* v. *United States,* 51 F. (2d) 609 (C.C.A. 7th)), certiorari denied, 284 U.S. 669, unless Subsection (c) calls for a different conclusion. That subsection provides:

> The term "person" as used in this section *includes* an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (Italics ours.)

In construing this section, the court below seems to have applied the doctrine of *expressio unius est exclusio alterius,* and accordingly held that it was only those corporate officers and employees specifically mentioned in Subsection (c) who could be guilty of attempting to defeat the payment of a corporation's tax. In so holding, the court apparently overlooked Section 701 (b) of the same Act, which provides:

> The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to *exclude* other things otherwise within the meaning of the term defined. (Italics ours.)

As these two sections are *in pari materia* they should, of course, be read together. So read, we think it is evident that Subsection (c) of Section 146 was not intended in any wise to detract from

Subsections (a) and (b). Its primary purpose undoubtedly was to make certain that an officer or employee of a corporation who was under a duty to file a corporate return or pay the tax due thereon, should be punished for failing to do so, but it clearly was not intended to exempt an officer or employee who, even though not under a duty, took affirmative action which had as its object the defeating or evading of corporate taxes. We submit, therefore, that the court below was in error in construing Subsection (c) as being exclusive instead of inclusive. If we are right in this, it follows that Subsection (c) is not a limitation upon Subsection (b). As we have shown above, without limitation Subsection (b) is clearly broad enough to include the acts charged in the indictment.

CONCLUSION

It is therefore respectfully submitted that the decision below is erroneous and that the case should be remanded for further proceedings.

J. CRAWFORD BIGGS,
Solicitor General.
FRANK J. WIDEMAN,
Assistant Attorney General.
JAMES W. MORRIS,
JOHN H. MCEVERS,
Special Assistants to the Attorney General.

SEPTEMBER 1934.

APPENDIX

STATUTES INVOLVED

Revenue Act of 1928, c. 852, 45 Stat. 791, 808, 835, 878:

SEC. 52. CORPORATION RETURNS.

(a) *Requirement.*—Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer. * * *

SEC. 146. PENALTIES.

(a) Any person required under this title to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this title, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this title to collect, account for, and pay over any tax

imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 701. DEFINITIONS.

(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

* * * * *

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(U.S.C.Sup. VII, Title 26, Sec. 1696.)

U. S. GOVERNMENT PRINTING OFFICE: 1934

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 25

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JACOB TROY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

STATEMENT OPPOSING JURISDICTION, AND MOTION TO DISMISS.

JOSEPH F. GUNSTER,
A. M. LUCKS,
R. L. LEVY,
Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 985

THE UNITED STATES OF AMERICA,

Appellant,

vs.

JACOB TROY.

STATEMENT OF APPELLEE DISCLOSING MATTERS AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT UPON THIS APPEAL.

The offense for which the defendant was indicted is as follows:

> "Any person required under this title to collect, account for, and pay over any tax imposed by this title, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (*c*). The term 'person' as used in

this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs."

Section 146 (*b*) Act of 1928, C. 852, 45 Stat. 791.

The defendant falls within Section (*c*), he having been indicted as president of the corporation.

Under Section (*c*), to bring him within the designated class of persons who can commit this offense, it is necessary to aver that the alleged violation is an act which defendant is "under a duty to perform", in his office capacity.

Several acts are charged against the defendant, but nowhere in the indictment does it appear that there was a legal duty either statutory or one imposed upon him by virtue of his office under the by-laws of the corporation.

Thus there is a failure in the indictment to charge one of the jurisdictional facts necessary to make out the offense within the definition as laid down by the Act of Congress.

The court in holding that the indictment failed to plead the necessary facts which were component parts of the offense, did not in any manner construe the Act of Congress, but, on the contrary, limited the opinion to a construction of the indictment, and in so doing necessarily arrived at the conclusion that the indictment was defective in this respect.

All of which is respectfully submitted.

A. M. Lucks,
R. L. Levy,
Attorneys for Appellee.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 8695. June Term, 1933.

UNITED STATES OF AMERICA,

Appellant,

vs.

JACOB TROY,

Appellee.

Now, March 26, 1934, Jacob Troy, appellee, appears by his counsel, A. M. Lucks and R. L. Levy, and moves as follows:

First. That the appeal be dismissed, and assigns the following reasons:

(*a*) This appeal is not within the jurisdiction of the Supreme Court of the United States.

(*b*) The opinion filed by the District Court wherein is made absolute a rule to quash the indictment, does not construe Section 146 of the Revenue Act of 1928, c. 852, 45 Stat. 791 (the statute upon which the indictment was founded).

(*c*) The opinion construes the indictment, but does not construe the Act of Congress.

(*d*) The opinion of the court holds that the indictment as drawn is faulty, in that it does not set forth the jurisdictional facts necessary to establish the offense as defined by the Act of Congress.

A. M. LUCKS,
R. L. LEVY,
Attorneys for Appellee.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 25 October Term, 1934

UNITED STATES OF AMERICA, APPELLANT

vs.

JACOB TROY

On Appeal from the District Court of the United States for the Middle District of Pennsylvania.

BRIEF FILED ON BEHALF OF JACOB TROY, APPELLEE

JOSEPH F. GUNSTER,
A. M. LUCKS,
R. L. LEVY,
Attorneys for Appellee.

Scranton Life Bldg.,
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Murrelle Printing Company, Law Printers, Sayre, Pa.

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ARGUMENT

I.

The sole question advanced by the Government in its brief is addressed to the proposition that the trial court in construing Section 146c of the Revenue Act of 1928 was bound to take into consideration Section 701b of the same act; that the trial court erred in construing sub-section (c) as being "exclusive" instead of "inclusive." If the trial court in his construction of Section 146c was not controlled by Section 701b of the act, then apparently it is conceded that the order quashing the indictment was correct.

It but requires a reading of Section 701b to see that this section has no application whatsoever to the proper construction of Section 146c.

Section 701b provides "the terms 'includes' and 'including' when used in a definition contained in this act shall not be deemed to exclude other things otherwise within the meaning of the term defined."

In construing this section and applying it to Section 146c the first question which presents itself is this:

First. Is the word "includes" used in a definition when it appears in Section 146c?

Second. Does the construction placed upon Section 146c by the trial judge "exclude other things otherwise within the meaning of the term defined?"

The answer to both these queries would appear to be in the negative.

Nowhere in Section 146 is there a definition of the term "person." Section 146c is a limitation placed upon the persons falling within the meaning of the Section, in that Section c includes officers or employees who while so acting are under a duty to perform the specific act done, and impliedly it excludes from the term "person" those officers who perform an act which they are not under duty to perform.

The term "person" requires no definition by Act of Congress. The act as enacted in Section 146 a and b refers to any person. Section C has the effect of excluding from prosecution persons of a designated class; it has the effect of removing a certain class of persons from the operation of the statute.

If Section 146c is not a definition, it necessarily follows that Section 701 has no application to the construction of 146c.

II.

Section 701 does not say "It shall not be deemed to exclude other persons and things otherwise within the meaning of the term defined" but it is limited by its terms to the word "things." In order to sustain the argument of the Government it is necessary to say the word "things" embraces within its meaning the term "person." We need but point out that this is a criminal case and that therefore, the Government is bound by the strictest possible construction of the Act of Congress.

The word "thing" has frequently been the subject of legal definition. It has been uniformly held "in common parlance it may intend all matters of substance in contradistinction to persons." 62 C. J. page 914.

Quoting from *Arnold's Estate,* 240 Pa. 261, at page 264, we find the following:

> "The controversy arises over the meaning of the phrase 'and other personal things,' as employed by the decedent in her will. Bouvier's Law Dictionary states that by the word 'things' is understood every object except man which may become an active subject of right; Anderson's Law Dictionary defines it as, 'subject-matter, substance, effect, any object that may be possessed;' Words & Phrases says, 'the

word "things" is of extensive signification, and in common parlance may intend all matters of substance in contradistinction to persons'; Webster's gives as a meaning, 'whatsoever may be possessed or owned'; and the Standard Dictionary, 'a subject of property and dominion.'"

III.

We believe the argument of the Government, however, must fall for a further reason. The Act of Congress in question must be construed as a whole. Every part thereof must be given due effect if possible.

Petition of Public National Bank of N. Y., 278 U. S. 101, quoting from opinion of Mr. Justice Sutherland, we find the following:

> "But we are not at liberty thus to deny effect to a part of a statute. No rule of statutory construction has been more definitely stated or more often repeated than the cardinal rule that 'significance and effect shall, if possible, be accorded to every word.' As early as in Bacon's Abridgment, Sec. 2, it was said that, 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void or insignificant.' Washington Market Co. v. Hoffman, 101 U. S. 112, 115, 25 L. ed. 782, 783."

Adopting the construction urged by the Government, the statute must be read and construed as if Section 146c had never been written into the Act. Manifestly, Congress had a definite purpose in writing Section 146c into the Act of Congress, and the

Section must be given effect under the above rule of construction.

If we adopt the construction as applied by the learned trial court, that the Clause C was intended as a limitation upon the class of persons referred to in 146 a and b, no violence will be done to this cardinal rule of construction.

All of which is respectfully submitted.

A. M. LUCKS,
R. L. LEVY,
Attorneys for Appellee.

OPINION

7

SUPREME COURT OF THE UNITED STATES.

No. 25.—October Term, 1934.

The United States of America, Appellant, *vs.* Jacob Troy.	On Appeal from the District Court of the United States for the Middle District of Pennsylvania.

[November 5, 1934.]

Mr. Justice McReynolds delivered the opinion of the Court.

This cause is here under the Criminal Appeals Act, March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C. A. Title 18, Sec. 682) and Sec. 238 Jud. Code (U. S. C. A. Title 28, Sec. 345). It necessitates consideration of certain provisions of the Revenue Act of 1928, c. 852, 45 Stat. 791.

Section 52 of that Act commands corporations to make tax returns sworn to by designated officers. Section 146 (a) declares that any person required to make return who wilfully fails so to do shall be guilty of a misdemeanor; 146 (b) that any person who wilfully fails to collect or truthfully account for and pay over any tax, and any person who wilfully attempts to evade or defeat any tax shall be guilty of felony; and 146 (c) that "the term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs".

Sec. 701 provides: "When used in this Act the term 'person' means an individual, a trust or estate, a partnership, or a corporation"; also "the terms 'includes' and 'including' when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined".

Applicable portions of the Act are copied in the margin.*

*Revenue Act of 1928, c. 852, 45 Stat. 791, 808, 835, 878.

Sec. 52. Corporation Returns.

(a) Requirement.—Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by

An indictment, in the Middle District of Pennsylvania, charged appellee Troy with violating Sec. 146 (b) in that while president of the Troy Oil Company, Incorporated, he unlawfully, wilfully and knowingly attempted to defeat and evade a large part of the tax due from that corporation for 1929, by making a return for it which falsely stated the gross income. The indictment was challenged because "it fails to set forth that the defendant was under a duty to perform the act in respect of which the violation occurred and in the absence of this averment the indictment fails to set forth facts showing prima facie, a commission of the crime charged in the indictment". The trial judge sustained the objection and

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the president, vice president, or other principal officer and by the treasurer or assistant treasurer. . . .

Sec. 146. Penalties.

(a) Any person required under this title to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this title, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Sec. 701. Definitions.

(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

. . . . . .

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

quashed the indictment. In his view it was necessary that there should be allegation and proof that appellee, as president of the corporation, was under a duty to make the return.

This was error; the questioned judgment must be reversed.

Section 146 (a) penalizes any person required to make a return, who wilfully fails so to do; paragraph (b) any person under duty to collect, account for, and pay over any tax, who wilfully fails, also any person (without regard to duty) who wilfully attempts to defeat the tax; and paragraph (c) declares that the term person as used in the section shall include an officer under duty to perform etc.

Considering these paragraphs along with the definitions of Sec. 701, it seems sufficiently clear Congress did not intend that paragraph (c) should exclude from paragraph (b) one who actually attempted to defeat. If the charge against appellee had been failure to make return, or pay over the tax for the corporation it might have been necessary to allege and show some duty in respect thereto; but when charged with wilful effort to defeat the tax by presenting a false return no allegation of duty to make the return was necessary. The alleged act sufficiently indicated appellee's criminal intent. Certainly we can find no legislative purpose to exempt from punishment one who actively endeavors to defeat a tax. And because some officers are said to be included in the term "person", all other individuals are not necessarily excluded.

Thus construed, all parts of the statute may have effect, and the manifest purpose of Congress will not be obstructed.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.